

Transcript of Merck Lead Plaintiff hearing and decision

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1                   UNITED STATES DISTRICT COURT  
2                   DISTRICT OF NEW JERSEY  
3                   CIVIL ACTION NO. 05-1157

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5                  IN RE: MERCK LITIGATION                   MOTIONS FOR LEAD  
6   PLAINTIFF AND LEAD  
7   PLAINTIFFS' COUNSEL

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10                   April 18, 2005  
11                   402 E. State Street  
12                   Trenton, New Jersey

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14                  BEFORE: HONORABLE STANLEY R. CHESLER, USDJ

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17                  JACQUELINE KASHMER  
18                  Official Court Reporter

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1 THE COURT: It's still just barely good morning,  
2 so, good morning, everybody. Enter your appearances,  
3 counsel.

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1 firm in this case or any another firm is because of what  
2 happened in the Halliburton case, pure and simple. But we  
3 can move forward today. But instead, Mr. Izard is putting a  
4 road block and he is saying no. Why? Why can't we move  
5 forward? That's my argument. And that man, he worked for  
6 Merck. He's the one who has a say here, not me, not them,  
7 not them. That's who we're here for. Thank you, your  
8 Honor.

9 THE COURT: Thank you. Is there anything further?

10 MR. IZARD: Only if you have any questions, your  
11 Honor.

12 THE COURT: No, I don't. I'm satisfied based upon  
13 what I've heard that the Cimato plaintiffs' proposal is  
14 indeed one which the Court, in fact, should and must adopt.  
15 I've read your papers with interest. While I read it with  
16 interest, quite frankly, I also read it with distress.

17 Frankly, I look forward to the day when something  
18 vaguely resembling the PSLRA and its selection process can  
19 be enacted to govern lawsuits like this.

20 This Court regards the type of skirmishing, sniping  
21 that are disclosed in these papers to be distasteful. The  
22 Cimato plaintiffs have presented a proposal which makes a  
23 good deal of sense to the Court. From the Court's point of  
24 view, there can only be one objective in selecting lead  
25 plaintiffs and lead counsel and, that is, to come up with a

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1 selection which, in fact, makes certain that a group which  
2 can effectively, intelligently and vigorously represent the  
3 interests of the potential ERISA class members is put  
4 together.

5 This Court could not care less about who's fighting  
6 to get what piece of what pie in terms of attorneys. Quite  
7 frankly, the Court does not regard class action litigation  
8 as being another variant of the attorneys' full employment  
9 act of 2005.

10 Quite frankly, it doesn't matter if some law firms  
11 get a bigger piece of the business and some law firms do  
12 not.

13 In short, the issue is which law firms can make  
14 this lawsuit move most effectively and intelligently for a  
15 plaintiff class.

16 The Court read, for example, the papers from  
17 counsel for plaintiff Horne suggesting that in some manner  
18 or other the law firms in the ERISA class action litigation  
19 have created a closed club and that they are valiantly  
20 trying to break into that club. I applaud them for their  
21 efforts. That's good business development, but from the  
22 Court's point of view, what is intelligent selection of  
23 attorneys is picking a group of attorneys who, in fact, have  
24 substantial experience and heft in this area, and there is  
25 no doubt from looking through the applications of this Court

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3 attorneys, there are more than an adequate number of  
4 attorneys in the firms which have agreed to sign on to that  
5 proposal. What is clear is that Schatz & Nobel does have  
6 substantial experience in this area and much more experience  
7 than other contenders.

8 The Court is satisfied that that, coupled with the  
9 experience of the other counsel who have joined that group,  
10 make it far and away the most appropriate proposal that's  
11 been submitted to this Court.

12 The Court is prepared to adopt that proposal,  
13 including the appointment to leadership positions in that  
14 proposal of Scott & Scott and the Johnson & Perkinson firms.  
15 Of course, if either firm does not wish such an appointment,  
16 they can tell me now and I'll be glad to accommodate them.

17 MR. ROTHSTEIN: What's the position, your Honor?

18 THE COURT: The position, as I understand it in  
19 their proposal, is participation in the discovery committee.  
20 Is that correct?

21 MR. IZARD: Yes, your Honor.

22 MR. ROTHSTEIN: We'll accept it.

23 MR. PERKINSON: Your Honor, we're happy to accept  
24 to work with lead counsel. Thank you.

25 THE COURT: Fine. As I said, the proposal

1 submitted by the Cimato group will be adopted by the Court.  
2 The Cimato group lead plaintiff structure will also be  
3 adopted by the Court and the Court will enter an appropriate